

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RODNEY GARROTT,

Petitioner,

V.

CASE NO. C06-1475-JCC-MAT

MAGGIE MILLER-STOUT, Superintendent,
Airway Heights Correctional Center,

ORDER

Respondent,

This Court, having reviewed Petitioner's petition for writ of habeas corpus (Dkt. No. 8), Respondent's Answer thereto (Dkt. No. 16), the Report and Recommendation of United States Magistrate Judge Mary Alice Theiler (Dkt. No. 21), the Petitioner's Objections (Dkt. No. 23), and the remaining record, hereby finds and rules as follows.

1. BACKGROUND

Petitioner Rodney Garrott was convicted by guilty plea on May 28, 2004 of one count of residential burglary and was sentenced to twenty-five months confinement. (Record (hereinafter R.) (Dkt. No. 17) Ex. 1.) He is currently serving other consecutive sentences and has a final possible early release date in 2012. Petitioner moved to withdraw his guilty plea on May 27, 2005, alleging the plea had been involuntary and that he had been denied effective assistance of counsel. (R. Ex. 4.) The trial

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1 court transferred the motion to the Washington Court of Appeals for consideration as a Personal
2 Restraint Petition. (R. Ex. 5.)

3 The Washington Court of Appeals dismissed the petition, ruling that Petitioner did not meet the
4 requirements to prevail on a claim of ineffective assistance of counsel. (R. Ex. 3.) It found that he failed
5 to present facts supporting his allegations, and that the evidence in the record showed he had been
6 advised of the nature of the charge against him and the direct consequences of his plea. The Washington
7 Court of Appeals issued a Certificate of Finality on February 16, 2006. (R. Ex. 7.) Petitioner filed a
8 Motion for Discretionary Review in the Supreme Court of Washington in August 2006. The motion was
9 rejected for untimely filing because any motion seeking discretionary review of the Order of Dismissal
10 had to have been received by January 9, 2006. (Pet. 17.)

11 Petitioner now petitions for habeas relief. The R&R recommends the petition be dismissed with
12 prejudice. (R&R at 1.) Petitioner has filed Objections.

13 II. ANALYSIS

14 This Court reviews the R&R and Petitioner's Objections *de novo*. *See* 28 U.S.C. § 636(b)(1).

15 A. Failure to Exhaust

16 Petitioner failed to exhaust in the state courts the claims he now presents for two reasons.

17 1. Petitioner failed to present his claims as federal claims in state courts.

18 As noted by the Magistrate Judge, Petitioner failed to properly exhaust his claims in state courts
19 because he did not fairly present his claims as *federal* claims in those courts. (*See* R&R 3–4.) Petitioner
20 raises no argument to the contrary. In order to present a claim to a federal court for review in a habeas
21 corpus petition, a petitioner must first have presented that claim to the state court. *See* 28 U.S.C. §
22 2254(b)(1). Furthermore, the petitioner must assert that he is in “custody in violation of the Constitution
23 or laws or treaties of the United States.” *Id.* § 2254(a). In his Motion for Withdrawal of Guilty Plea,
24 Petitioner claimed he had involuntarily pled guilty due to ineffective assistance of counsel and “neglect
25 and mistakes in court procedure” (R. Ex. 4 at 3), yet he did not present these claims as federal claims or

1 suggest that they implicated federal law.

2 **2. The state's highest court did not resolve any federal issues.**

3 A petitioner must also “give the state courts one full opportunity to resolve any constitutional
 4 issues by invoking one complete round of the State’s established appellate review process.” *O’Sullivan*
 5 *v. Boerckel*, 526 U.S. 838, 845 (1999). This includes presenting claims to the state’s highest court. *See*
 6 *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994). Contrary to what is stated in the R&R (R&R 2) and the
 7 State’s Answer (Ans. 2), it appears that Petitioner did attempt to appeal to the Supreme Court of
 8 Washington by filing a motion for review on August 24, 2006. However, the motion was rejected (Pet.
 9 17) because it was not filed within thirty days of the order as required under state law. *See* WASH. R.
 10 APP. P. 13.5(a). Petitioner failed to exhaust the claims he brings to this Court, because the Supreme
 11 Court of Washington did not actually resolve *any* issues, much less federal issues, presented in the motion
 12 for review. Thus, Petitioner failed to exhaust for this additional reason.

13 **B. Procedural Bar**

14 “In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an
 15 independent and adequate state procedural rule, federal habeas review of the claims is barred unless the
 16 prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of
 17 federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of
 18 justice.” *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). Petitioner is barred from bringing his claims
 19 to federal court for two reasons.

20 **1. Petitioner failed to meet a state procedural requirement in attempting to
 21 appeal to the Supreme Court of Washington.**

22 First, if a state court clearly and expressly states that its judgment rests on a state procedural bar,
 23 the petitioner is barred from asserting the same claim in a federal habeas proceeding. *See Harris v. Reed*,
 24 489 U.S. 255, 263 (1989). Petitioner defaulted his claims when the Supreme Court of Washington
 25 rejected his motion for untimely filing.

1 **2. Petitioner would now be barred from attempting to exhaust his claims in**
 2 **state courts.**

3 Second, absent a clear statement by a state court, a federal habeas claim is barred where the
 4 petitioner failed to exhaust in state courts, and those courts would now find the claim to be procedurally
 5 barred. *See Coleman*, 501 U.S. at 735 n.1. As noted by the Magistrate Judge (R&R 3), Petitioner’s
 6 claims are now barred in state courts under a law prohibiting the filing of a petition or motion for
 7 collateral attack on a judgment and sentence in a criminal case more than one year after the judgment
 8 becomes final. *See WASH. REV. CODE § 10.73.090(1)*. Petitioner’s conviction became final when the
 9 Washington Court of Appeals issued a Certificate of Finality on February 16, 2006. Because it has been
 10 over a year since that date, his claims are now time-barred.¹ Petitioner appears to address this issue in his
 11 Objections (Obj. 9), but he misunderstands section 10.73.090(1) to apply to a past motion he filed.
 12 Petitioner is barred from filing any *future* motion that he would have to bring in order to exhaust his
 13 claims in state courts. (*See* R&R 4.)

14 **3. No exceptions to the procedural bar apply to Petitioner’s claim.**

15 Petitioner appears to object generally to the procedural bar against his claims by asserting that he
 16 did not receive notice of the Court of Appeals’ order, and that he did not know his petition was dismissed
 17 until he received the Certificate of Finality, at which point the time period within which to file a motion to
 18 seek review had passed. (*See* Obj. 10.) Because Petitioner has procedurally defaulted his claims in state
 19 courts, the only avenue available for this Court’s review is through one of *Coleman*’s two exceptions.
 20 Petitioner fails to meet the requirements of either exception, as follows.

21 First, Petitioner cannot meet the standard under the “miscarriage of justice” exception, which
 22 applies to cases “where a constitutional violation has probably resulted in the conviction of one who is
 23 actually innocent.” *Murray v. Carrier*, 477 U.S. 478, 496 (1986). “To establish the requisite probability,

24 ¹ Under section 10.73.100 of the Revised Code of Washington, the one-year limit of section
 25 10.73.090 does not apply to petitions or motions based on certain identified grounds. *See WASH. REV.*
 26 *CODE § 10.73.100*. However, Petitioner’s claims are not based on any of those grounds.

1 the petitioner must show that it is more likely than not that no reasonable juror would have convicted him
 2 in the light of the new evidence.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995). Petitioner does not offer
 3 any evidence of actual innocence.

4 Second, Petitioner cannot meet the requirements of the “cause and prejudice” exception.

5 “[C]ause” under the cause and prejudice test must be something *external* to the petitioner, something that cannot fairly be attributed to him: “[W]e think that the existence of cause for
 6 a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel’s efforts to comply with the State’s
 7 procedural rule.”

8 *Coleman*, 501 U.S. at 753 (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)). “For example, ‘a
 9 showing that the factual or legal basis for a claim was not reasonably available to counsel . . . or that
 10 ‘some interference by officials’ . . . made compliance impracticable, would constitute cause under this
 11 standard.” *Id.* Petitioner does not offer evidence suggesting interference by the Washington Court of
 12 Appeals or its officials as the cause of his alleged failure to receive notice of the order. The Magistrate
 13 Judge, acknowledging that Petitioner may assert cause through some inaction or insufficient notification
 14 on the part of the Washington Court of Appeals, properly found that Petitioner’s vague assertions do not
 15 suffice to establish cause. (*See* R&R at 4). Petitioner fails to raise arguments sufficient to show cause in
 16 objection to the R&R’s finding.

17 Petitioner, having procedurally defaulted his claims in state courts and not meeting the
 18 requirements of either exception to the procedural bar, cannot bring those claims to federal court.

19 **III. CONCLUSION**

20 For the foregoing reasons, the Court ADOPTS the R&R and DISMISSES WITH PREJUDICE
 21 Petitioner’s habeas petition. The Clerk is DIRECTED to CLOSE this case and to send copies of this
 22 Order to Petitioner, to counsel for Respondent, and to Magistrate Judge Theiler.

23 SO ORDERED this 27th day of July, 2007.

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 25 
 John C. Coughenour
 United States District Judge